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be actually taken, in the physical sense, is no longer necessary. Sedgwick, Const. Law, 2nd ed., 462, 463; 1 Lewis, Eminent Domain 61. It is as unfair to decide the principal case on the assumption that the original grantees of the land made the restrictions solely with a view to acquiring property rights against the government as it is to assume that they had in view the prohibition of offensive businesses carried on only by private individuals. Their real object was to prevent occupations injurious to their use of the land. Rights under restrictions as to the height of buildings have been compensated. *Ladd* v. *Boston* (1890) 151 Mass. 588. The principal case appears to present a rather close analogy. See also 1 COLUMBIA LAW REVIEW, 121, 551.

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AGENCY CLAUSES IN INSURANCE POLICIES.—The attempts of insurance companies to negative the effect of decisions holding that they have constructive knowledge of facts known to their agents, have resulted in a wealth of conflicting cases. The courts have looked with much disfavor on the purpose of the insurer to avoid responsibility for his agent's acts, and this has opened a field for judicial legislation. See *Partridge* v. *Ins. Co.* (1879) 17 Hun, 95. The New York cases are interesting. In *Rohrback* v. *Germania Fire Ins. Co.* (1875) 62 N. Y. 47, it was stipulated in the application that "any person other than the assured who may have procured this insurance to be taken by this company shall be deemed the agent of the assured." The assured's true statements were incorrectly written down by the soliciting agent but the agency clause was held to free the company of liability. This was affirmed in *Alexander* v. *Germania Fire Ins. Co.* (1876) 66 N. Y. 464. The next case in point of time was *Sprague* v. *Holland Purchase Ins. Co.* (1877) 69 N. Y. 128, where the policy contained the same agency clause as well as a condition that the application must be made out by the insurer's authorized agent. These clauses were held inconsistent. In *Whitehead* v. *Ins. Co.* (1879) 76 N. Y. 415, the doctrine of the Rohrback case was confined to acts of the agent in connection with the original application. A recent decision of the Court of Appeals seems on principle to have overruled the theory of this line of decisions. *Sternaman* v. *Metropolitan Life Ins. Co.* (1902) 62 N. E. 762. A medical examiner, whose acts were assumed by the assured in the application, and who, it was agreed, should be deemed the agent of the assured, not of the insurer, made false entries to correct answers. It was held that such statements could be shown by parol to bind the company, since the agreement did not change the fact that the examiner was the agent of the insurer, and on grounds of public policy the company should be bound by the agent's acts. The former cases, cited above, are distinguished as involving only solicitors or brokers of insurance. This view seems open to criticism in that, on the basis of the principal case, the fact of the agency relation between solicitor and the insurer should have been in issue in each instance. Though the solicitor may be the agent of the assured, if it can be shown that he was acting for the company, the rule of the principal case should hold.

It is clear that A. and B., acting as principals, cannot by their mere agreement create a fiduciary relation between A. and C. If the agreement in construed to mean that the parties agree to effect a real relation the case in discussion is clearly right. On the ordinary doctrine of relinquishment, no such agency in fact existing, to the knowledge of the insurer's agent, the company is unable to avail itself of the warranty. But it seems equally clear that A. may assume responsibility for the acts of B's agent. The agency clause was, it seems, so construed in *Rohrback* v. *Ins. Co.*, *supra*. FOLGER, J., who wrote the opinion in that case, refers to this in *Van Schoick* v. *Ins. Co.* (1877) 68 N. Y. 434, as a condition "that the company would not be bound by the knowledge of the agent." GRAY, J., in *Allen* v. *Ins. Co.* (1890) 123 N. Y. 6, says, "if Noble [the soliciting agent] had been the agent of the defendant it was perfectly competent to stipulate by the contract of insurance that anything done by or known to the agent should be without effect upon the contract unless made known in writing to the principal," citing preceding New York cases. Construing the agency clause as the assured's assumption of liability for the agent's acts, the view of GRAY, J., seems unassailable. *Sprague* v. *Holland Purchase Ins. Co.*, *supra*, on this construction seems wrong. In the principal case there is an explicit condition that no "information or statement * * * made to the medical examiner * * * shall modify or alter the declarations and warranties." The objection that the examiner is not made an agent by the stipulation there seems beside the mark since there is an assumption of liability by the assured. The case discussed must rest on the ground that public policy will not allow an insurance company to avoid its obligations for its agent's acts and still retain the premiums. The carrier case cited to support the court seems not in point in view of the New York rule as to a carrier's absolving himself from liability for the negligence of his servants.

Very generally a clause simply reciting that the one writing the application shall be deemed the agent of the assured has been treated as a restriction of the implied authority of the agent. This construction is tenable, if the agency clause is no broader than above, but cannot be applied to the case at hand. Notice of such a limitation of authority is not good if made *ex post facto* in the policy, *Kausal* v. *Ins. Asso.* (1883) 31 Minn. 17, and if the assured does not get actual notice, it seems that, in jurisdictions where the doctrine of estoppel obtains, the assured may show want of notice. *Tubbs* v. *Ins. Co.* (1891) 84 Mich. 646. The decision in *Sprague* v. *Holland Purchase Ins. Co.*, *supra*, may be assumed to have been reached on this last view of the effect of the agency clause. It is worthy of note that, though the principal case is limited in its decision to medical examiners and those necessarily agents of the insurer, the court cites, as setting forth its ideas on the possibility of fraud, where the company acts through zealous agents, the well known case of *Ins. Co.* v. *Wilkinson* (1871) 13 Wall. 22, where the agent was a mere solicitor of insurance.